IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 116 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

@

SHIRIL BABULAL SHAH

Versus

LEGAL HEIRS & REP. OF KUSUMBEN WD/O CHHAGANLAL SHAH

Appearance:

1. Civil Revision Application No. 116 of 2002

MR ANAND SHARMA for MR SUNIL C PATEL for Petitioner

MR JB PARDIWALA for Respondent No. 1-3

..... for Respondent No. 4-4/4

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 28/08/2002

ORAL JUDGEMENT

1. Heard learned Counsel Shri Sharma for the petitioner and Learned Counsel Shri J.B.Pardiwala, for the respondent Nos.1 to 3, appearing on Caveat. The respondents No.4/1 to 4/4, legal heirs of the original defendant No.4 had not contested in Appeal and not thought it fit to challenge the Appellate Court's order.

2. Three plaintiffs viz. (i) Kusumben wd/o

Chhaganlal Shah, (ii) Bharatkumar Chhaganlal Shah and (iii) Kalpeshkumar Chhaganlal Shah, jointly filed Regular Civil Suit No.44 of 1988 against the two defendants, viz. (i) Late Shri Babulal Harakchand Shah and (ii) Shiril Babulal Shah, son of late Shri Babulal Shah, before the Court of learned 2nd Joint Civil Judge (SD), Navsari, to recover the possession of the rented premises u/s.13(1)(c), 13(1)(g) and 13(1)(k) of the Bombay Rents Hotel & Lodging Housing Rates Control Act, 1947 (for short "the Act").

3. During the pendency of the Suit original tenant Babulal Shah died, therefore, his legal heirs i.e. widow Indumatiben and his daughter Ritaben Ajitkumar, Linaben Vikrambhai Shah, Binduben Pranav Shah have been brought on record as defendants No.1/1 to 1/4. Though served, they have not preferred to defend the Suit. The Suit was defended only by the original defendant No.2 - Shiril Babulal Shah.

4. The plaintiffs are the owner of the Suit premises bearing Municipal House No.1656 situated at Navsari. It was let out to the original defendant No.1 deceased Babulal Shantilal at a monthly rent of Rs.90/- for running his dispensary in 1957. It is 18 x 32 ft. The same area is at first floor, 2nd floor and 3rd floor. The first floor was used by Dr.Rajendra Desai (Dentist), another tenant, the 2nd floor having one room and kitchen was used by the plaintiff No.2 Bharatkumar as residence, the 3rd floor of the Suit premises was in the nature of loft and used for household materials.

5. Thus, out of the entire Suit premises the plaintiffs were in possession of 2nd and 3rd floor. The 2nd floor having one room and kitchen and 3rd floor, though of same area, but was in the nature of loft.

6. It was a case of the plaintiffs that original plaintiff No.1 Kusumben was an old lady of 68 years. She had two married sons viz. Bharatkumar and Kalpesh, plaintiffs No.2 & 3 respectively. The plaintiff No.2 was doing service and the plaintiff No.3 was Labour Practitioner after completing his Law Graduation. Along with them the distant relative Chhotubhai was also residing in the Suit premises in the 2nd floor. Considering the family members of the plaintiffs they were finding it extremely difficult to accommodate themselves in the suit premises which, according to them, was not sufficient space. Plaintiff No.3 was a new Lawyer and practising in the suit premises. He was not having separate office to entertain his client. Thus,

the plaintiffs needed the Suit premises from the tenant of ground floor for their reasonable and bonafide requirement to have the office of plaintiff No.3. It was contended that the defendants were financial sound and already acquired suitable accommodation in Navsari itself. The original defendant No.1 - father, who was practising doctor was in a position to obtain another premises for his doctor son - defendant No.2, who was already having dispensaries at Tarota Bazar, Dargah Road and Viraval at Navsari. Therefore, they will not suffer any hardship if the eviction decree is passed against them. On the other hand if the Decree is not passed then the plaintiffs will suffer greater hardship, more particularly the plaintiff No.3, who started practice some time before filing of the Suit. The Suit was filed on other grounds also with which we are not concerned as the Appellate Court has reversed the Judgment and Decree passed by the trial Court only on the ground of reasonable and bonafide requirement of the plaintiffs and that greater hardship would be caused to them if the Decree is not passed in their favour.

7. The learned 2nd Joint Civil Judge (SD), Navsari, by his Judgment and Decree dated 26.2.1993 dismissed the Suit of the plaintiffs after 5 years of filing the same on the ground that the plaintiffs failed to prove that they need the Suit premises reasonably and bonafide.

8. It may be stated that during the pendency of the Suit original defendant - tenant Dr.Babulal Shah died and therefore his heirs and Legal representatives were brought on record. As stated earlier except the original defendant No.2 - Dr.Shiril Babulal Shah, no one was interested in defending the Suit and the Suit was decided exparte against the remaining defendants i.e. legal representatives of defendant No.1 - Dr. Babulal Shah.

9. Aggrieved by the aforesaid Judgment and Decree passed by the learned Civil Judge dismissing the Suit, the plaintiffs filed Regular Civil Appeal No.36 of 1994 before the Court of learned Extra Assistant Judge, Valsad at Navsari, which came to be allowed on 3.2.2001 and the learned Appellate Judge set aside the Judgment and Decree passed by the trial Court and decreed the Suit of the plaintiff and directed the defendants to hand over possession of the Suit premises to the plaintiffs within 3 months from the date of the order and also directed the defendants to pay the mesne profit for using the suit premises and hand over vacant possession of the same within 3 month thereof. This Judgment and Decree passed by the Appellate Court is challenged by the present

petitioner, who is original defendant No.2 joining the legal heirs of original defendant No.1 Dr.Babulal Shah, as respondents No.4/1 to 4/4, as they were not interested in challenging the Judgment and Decree passed by the Appellate Court.

10. Learned Counsel Shri Anand Sharma for the petitioner vehemently submitted that without properly considering the reasons assigned by the trial Court for dismissing the Suit of the plaintiffs the Appellate Court reversed the Judgment and Decree passed by the learned trial Judge in his appellate jurisdiction. Therefore, though, bonafide requirement is a question of fact, this Court should interfere in its revisional jurisdiction. Having carefully gone through the impugned judgment and Decree passed by the learned Appellate Judge it cannot be said that without considering the reasons assigned by the learned trial Judge, the learned Appellate Judge reversed the Judgment and Decree passed by the trial Court. In Para : 11 of the Judgment the learned Appellate Judge has clearly observed that plaintiff No.3 required the suit premises for his personal labour practice and it cannot be said that the plaintiffs have failed to prove their case about their bonafide and personal requirement of the suit premises for having the office of plaintiff No.3. The learned Appellate Judge has further observed that...."This Court has gone through the impugned Judgment and it cannot be said that, the trial Court has not properly considered the documentary evidence produced and proved by the parties to the Suit and the trial Court has not considered the above said admissions made by the defendant No.2 in his deposition at Ex.75 and the trial Court has not properly considered the facts of the case and committed the error in dismissing the Suit."

11. For reversing the Judgment and Decree passed by the trial Court dismissing the Suit of the plaintiffs, the learned Appellate Judge has taken into consideration the measurement of the Suit premises which was 18 x 32 ft. which was having 1st floor, 2nd floor and 3rd floor of same size. The 1st floor was occupied by another doctor as tenant since last 18 years prior to filing of the Suit, 2nd floor was consisting of only one room and kitchen which was used by the plaintiffs for their residential purpose and though the 3rd floor was having one room and kitchen which was in the nature of loft, therefore, it was used for storing household materials. Couple with this the learned Appellate Judge has taken into consideration the admission made by the present petitioner - original defendant No.2 that apart from the present premises, where he is having dispensary, he has

got two other dispensaries, viz. one at Dargah Road and another at Gandevi Road. He was having Maruti Car, Scooter and his own flats and paying income-tax since last 5 years. Of course, both the dispensaries were in rented premises. However, at this stage it was pointed out by the learned Counsel Shri Pardiwala appearing for the respondents No.1 to 3 on Caveat that his another dispensary is hardly at a distance of 1/2 k.mtr. from the Suit premises, therefore, his patients can easily go to that another dispensary.

12. Keeping in mind the facts of the case and the evidence led by the parties the learned Appellate Judge has relied upon the following Supreme Court Judgments :

i) (1999) 6 SCC 5400 - RUMKUBAI (SMT) v/s. HAJARIMAL DHOKALCHAND CHANDAK;

ii) (1999) 2 SCC 535 - VISHWANATH & ANR. V/S. HIDAYATTULLAH;

iii) AIR 1999 SC 1226 - DATTATRAYA LAXMAN KAMBLE V/S. ABDUL RASUL MOULALI KOTKUNE.

13. While reversing the judgment and Decree passed by the learned trial Judge the learned Appellate Judge has taken into consideration the admission of the defendant No.2 made in his deposition at Ex.75 wherein he had admitted that he had 3 other clinics wherein he is doing medical practice. Ex.26 shows that the defendant No.2 - present petitioner had acquired and purchased 2 flats at Ist floor and 2nd floor in a building situated in Vahid Maholla which is hardly at a distance of 100 ft. away from the suit premises.

14. While dismissing the Suit of the plaintiff the learned trial Judge has not at all recorded his findings regarding greater hardship. However, the learned Appellate Judge was satisfied that the plaintiffs proved their reasonable and bonafide requirement of the suit premises, therefore, the learned Appellate Judge also considered the greater hardship. From the evidence and the facts stated hereinabove the learned Appellate Judge has come to the conclusion that the defendant No.2 present petitioner was having as many as 3 clinics, 2 flats of his ownership in a nearby area of the Suit premises, he is having Maruti Car, scooter, etc. Thus, he is well to do. As against that the plaintiff No.3, who had just started his career as Lawyer on labour side, would require place at least admeasuring 18 x 32 ft. and if the Decree of eviction is not passed then the greater hardship would be caused to the plaintiff No.3. Accordingly the learned Appellate Judge reversed the Judgment and Decree of the trial Court and directed the

defendant to hand over vacant and peaceful possession within 3 months from the date of Decree i.e. from 3.2.2001. At the cost of repetition I may state that other defendants, who are legal heirs of original defendant No.1 - Dr.Babulal Shah, were never interested in the premises. Therefore, they are joined as formal respondents in this Revision Petition.

15. Learned Counsel Shri J.B.Pardiwala appearing for the respondents No.1 to 3 - plaintiff submitted that when the first Appellate Court recorded the finding of fact and decreed the Suit of the plaintiff then this Court should not interfere in its revisional jurisdiction u/s.29(2) of the Code of Civil Procedure. In support of his argument Shri Pardiwala relied upon the Judgment of learned Single Judge of this Court in the case of MODI BACHUBHAI SAKALCHAND v/s. MARIYAMBIBI NOORMOHMAD, reported in 2001 (3) GLR 2019, wherein it is held that the reappreciation of evidence is impermissible. Once the Court finds that the re-appreciation is not permissible, then there is no law point involved in the matter. However, learned Counsel Shri Anand Sharma for the petitioner - tenant vehemently submitted that it was a case of concurrent finding of fact whereas in this case the trial Court dismissed the Suit of the plaintiff whereas the Appellate Court reversed the decree in Appeal. This would not make any difference. As stated earlier by me the first Appellate Court can re-appreciate the evidence and on re-appreciation of evidence if the first Appellate Court comes to a different conclusion by valid and cogent reasons and reverse the Judgment and Decree of the trial Court then this Court would not interfere with the findings of facts recorded by the Appellate Court in its Appellate jurisdiction u/s.29(2) of the Rent Act.

16. Similar view is taken by the Hon'ble Supreme Court in the case of PATEL VALMIK HIMATLAL & ORS. v/s. PATEL MOHANLAL MULJIBHAI (DEAD)THROUGH LRS., reported in 1999(1) GLR 15.

17. Lastly, learned Counsel Shri J.B.Pardiwala for the respondents - plaintiffs vehemently relied upon the Judgment of the Hon'ble Supreme Court in the case of SIDDALINGAMMA & ANR. V/s. MAMTHA SHENOY, reported in (2001) 8 SCC 561. In Para : 9 of the said Judgment the Hon'ble Supreme Court observed that ..."bonafide requirement must be an outcome of a sincere, honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of

the family which would entitle the landlord to seek ejectment of the tenant. The question to be asked by a Judge of facts, by placing himself in the place of the landlord, is, whether in the given facts proved by the material on record the need to occupy the premises can be said to be natural, reason, sincere, honest ? If the answer is in the positive then the need is bonafide. (emphasis supplied). The Hon'ble Supreme Court further held that the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. (Emphasis supplied).

The Hon'ble Supreme Court further observed that ..."If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell in lesser premises so as to protect the tenant's continued occupation in tenancy premises.

The law laid down by the Hon'ble Supreme Court in SIDDALINGAMMA's case (supra) squarely applies to the facts of the present case.

18. From the Judgment of the learned Appellate Judge it is clear that he himself put in place of landlord and found the need of the plaintiff, more particularly, the plaintiff No.3 to have his office of a Lawyer on the ground floor natural, real, sincere and honest. Therefore, he decreed the Suit.

19. However, learned Counsel Shri Sharma for the petitioner tried to submit that all the Judgments relied upon by the learned Appellate Judge in his Judgment are on different points. In all the cases of the Hon'ble Supreme Court the facts were different. The landlord wanted to start new business or profession for which they needed the premises, therefore, the Hon'ble Supreme Court decreed the Suit, wherein in this case the plaintiff No.3 had already become Lawyer in 1984 and started practising and there was no immediate need, therefore, they did not file the Suit and waited till 1988. In that view of the matter it cannot be said to be a bonafide need of the plaintiff. It is true that plaintiff No.3 became lawyer in 1984 and immediately thereafter he had not filed Suit for possession of the Suit premises, but that will not be a ground to deny the Decree. In fact, the Junior has to attend the office of Senior. Now a days there is keen competition in the profession and one would take at least a reasonable period of 4 to 5 in settling down and starting his own office. After 4 years of practice if

the plaintiff No.3 realised that he should have his own office in his own premise then on facts of this case it cannot be said that he had no genuine or reasonable requirement.

20. Once this Court comes to the conclusion that there was a bonafide requirement of the plaintiffs for starting the office of plaintiff No.3 then the question regarding comparative hardship is required to be considered. As stated earlier the petitioner is a doctor. He is having almost 3 clinics and 2 flats in his name. One dispensary is hardly at a distance of 1/2 k.mtr. from the present suit premises and therefore he will not be a looser. As against that the plaintiff No.3 being new in profession will find it extremely difficult either to hire or purchase his office. Thus, comparative hardship is in favour of the plaintiff rather than the defendant No.2 present petitioner.

21. Before parting, I must state that learned Counsel Shri J.B.Pardiwala has also relied upon the Judgment of the Hon'ble Supreme Court in the case of SRI RAJA LAKSHMI DYEING WORKS & ORS. V/S. RANGASWAMY CHETTIAR, reported in AIR 1980 SC 1253. A faint attempt was made by learned Counsel Shri Sharma for the petitioner by submitting that the findings recorded by the Appellate Court regarding bonafide requirement and greater hardship is perverse. I am afraid, this submission of Shri Sharma cannot be accepted in view of the detailed reasoned Judgment given by the learned Appellate Judge, more particularly, admission of the petitioner - original defendant No.2 himself about number of clinics held by him as well as 2 flats owned by him.

22. In case of BHAICHAND RATANSHI v/s. LAXMISHANKER TRIBHOYAN, reported in AIR 1981 SC 1690, the Hon'ble Supreme Court held that .."Under Section 29(2) although the High Court has a wider jurisdiction than the one exercisable under Section 115 C.P.C. its revisional jurisdiction can only be exercised for a limited purpose with a view to satisfying itself that the decision was according to law. Hence in a Suit for eviction for bona fide requirement when the lower Courts had not failed to apply their mind to the requirements of Section 13(2) as to comparative hardship and their finding was not manifestly perverse nor erroneous the High Court could not substitute its own finding for the one reached by the lower Courts on a reappraisal of the evidence".

23. In the instant case trial court erred in holding that the plaintiff's need was not reasonable and

bonafide. Therefore, it did not give any finding on the point of comparative hardship. When, first Appellate Court recorded finding of fact and held in favour of the plaintiffs that their need was reasonable and bonafide, then this Court would certainly not interfere with such finding of facts, based on the evidence, in its revisional jurisdiction u/s.29(2) of the Rent Act. Similarly, on the point of comparative hardship the Appellate Court found that if the Decree is not passed then greater hardship would be caused to the plaintiffs rather than the defendant - present petitioner. For recording this finding the learned Appellate Judge duly considered the evidence on record and gave cogent reasoning. Therefore, such a finding of fact recorded by the Appellate Court can not be interfered by this Court in its revisional jurisdiction u/s.29(2) of the Rent Act.

24. In view of the above discussion I do not find any substance or merit in this Revision Petition. Accordingly, it fails and is hereby dismissed. Notice discharged. No order as to costs.

Date : August 28, 2002 (B.J.Shethna, J.)

sas